

Civil Revision Application No 37 of 95

Date of decision: 08/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMBHABEN ARJANBHAI & ORS

vs

STATE OF GUJARAT & 1

Appearance:

MR. S.M. SHAH FOR MR HARIN P RAVAL for Petitioner
MR KM MEHTA, AGP for Respondent No.1

Coram : MR.JUSTICE S.D.SHAH

ORAL JUDGEMENT

1. Mr. S.M. Shah for Mr. Harin P. Raval appears for the petitioners and Mr. K.M. Mehta, AGP appears for Respondents. An application was filed in the Court of District Judge, Junagadh along with a regular Civil Appeal for condonation of delay. Such application was filed on 14th December, 1993. The judgment and decree under challenge in Appeal was passed by Civil Judge (S.D.) on 30th November, 1990 in Regular Civil Suit

No. 762 of 1982. It appears that the District Government Pleader was vigilant enough to apply for certified copy of the judgment and decree immediately and he applied for certified copy on 14th December, 1990. The same was received on 12th February, 1990 and as per the requirement of Law Officers Rule, the same was sent to the Legal Department for its opinion as to whether Appeal should be preferred or not. Unfortunately, the communication was received vide letter dated 1st December 1993 to the effect that Appeal is required to be filed and within 13 days thereafter the Appeal is filed. Appeal was obviously barred by limitation. Therefore, the application for condonation of delay was given. Such application was contested by the heirs of original plaintiff. After hearing both the parties, the learned Extra Assistant Judge, Junagadh, vide order dated 29th December, 1994 exercised the discretion which is vested in him under Section 5 of the Limitation Act. Section 5 of the Limitation Act reads as under :

5.Extension of prescribed period in certain cases: Any

appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

2. From the aforesaid provision it becomes clear that a discretion is left with the court to admit an appeal or an application which is filed beyond the prescribed period of limitation if sufficient cause is shown for not preferring the appeal or application within the prescribed period. The use of word "may" leaves discretion to the Court and such discretion is to be judiciously exercised. In the present case, the Extra Assistant Judge has exercised such discretion and has ordered condonation of delay. Being aggrieved by such order, the heirs of the original plaintiff have preferred the present Civil Revision Application. It is submitted before this Court that delay was for a period of more than three years and that different standard cannot be applied in case of Government and a private litigant. It was also submitted that in fact no cause was shown, much less a sufficient cause which would justify condonation of delay. In my opinion, when discretion is exercised by a court by giving reasons in the order itself, the court may be right or may be wrong in exercising such discretion. The court in the present case is obviously not guided away by thoroughly irrelevant factors or considerations. Ordinarily, in jurisdiction of this court under Section 115 of the Civil Procedure Code, as circumscribed by the Supreme Court of India by its various decisions, even against a wrong exercise of discretion, the courts are advised not to interfere in its power

under Section 115 of the C.P. Code. Keeping the aforesaid broad principle in mind, I am of the opinion that no interference in the ultimate order passed by the lower appellate court was called for as it was only a discretionary order which the Extra Assistant Judge has passed. Hence, the present Civil Revision Application is dismissed. Rule is discharged. The order passed by the Extra Assistant Judge, Junagadh, dated 29th December, 1994 is upheld and the Extra Assistant Judge, Junagadh is directed to decide the appeal by the Assistant Judge/District Judge, Junagadh within a period of four months from today. Since this Court is issuing further direction in separate Civil Revision Application as regards execution proceeding, the Extra Assistant Judge/District Judge, Junagadh, shall not issue any interim stay in the appeal which he is now directed to decide within four months. Rule is discharged. No costs.
